

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

HB 1369 - SB 1282

February 22, 2019

SUMMARY OF BILL: Enacts the *Tennessee Natural Marriage Defense Act* and declares it is the policy of the State to defend natural marriage as recognized by the people of Tennessee in the State Constitution. Further declares marriage in Tennessee remains between one man and one woman and any court decision purporting otherwise is unauthoritative, void, and of no effect in Tennessee.

Authorizes the Speaker of the House of Representatives and the Speaker of the Senate to employ legal counsel to defend the act if the Attorney General declines to defend the act pursuant to Tenn. Code Ann. § 8-6-109(b)(9).

Prohibits any state or local agency from giving force or effect to any court order that has the effect of violating Tennessee's laws protecting natural marriage.

Prohibits any state or local agency from levying upon the property or arresting the person of any government official or individual who does not comply with any court order that is in contradiction to natural marriage in Tennessee.

Requires county clerks to electronically submit all marriage license applications to the Office of Vital Records (Vital Records) upon receiving a completed application. Requires Vital Records to determine, within three business days of receipt, whether the license being applied for would entitle the applicants to enter into a lawful or unlawful marriage under Article XI, § 18 of the Constitution of Tennessee. If the license would allow for a lawful marriage, then a license shall be issued. If the license would allow for an unlawful marriage, then the application shall be denied.

ESTIMATED FISCAL IMPACT:

Decrease State Revenue – Exceeds \$5,700/Recurring

**Increase State Expenditures – \$8,600/One-Time
\$104,500/Recurring**

Decrease Local Revenue – Exceeds \$7,600/Recurring

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Other Fiscal Impact – To the extent the Attorney General declines to defend the act, and the Speaker of the Senate and the Speaker of the House of Representatives elect to employ the services of legal counsel to defend the act, the increase in state expenditures is estimated to exceed \$100,000.

The provisions of the bill could jeopardize federal funding if it is determined the state is noncompliant with federal law. The Division of TennCare reports that if someone is denied coverage that would otherwise be eligible by virtue of being in a same-sex marriage, and such action is considered noncompliant with federal law, then the Bureau’s federal funding could be in jeopardy. The Department of Human Services reports that the Supplemental Nutrition Assistance Program and Temporary Assistance for Needy Families funds the department receives could also be in jeopardy.

Assumptions:

- The bill declares that it is the policy of Tennessee to defend “natural marriage” as it is defined in Article XI, § 18 of the Constitution of Tennessee. The bill further declares that any court decision, including a decision by the Supreme Court of the United States, purporting to strike down “natural marriage” is unauthoritative, void, and of no effect in Tennessee.
- The bill will result in marriages of same-sex couples being null and void in Tennessee, whether married in Tennessee or in another state; and will also result in same-sex married couples being denied services offered to different-sex married couple

Decrease in marriage license revenue:

- The bill will result in fewer marriage licenses being issued in Tennessee. Specifically, marriage licenses issued to same-sex couples.
- Data from the 2010 census show 10,898 same-sex couples in Tennessee in 2010. It is assumed for purposes of this fiscal note that the number of same-sex couples living in Tennessee will remain constant.
- A recent study by the Williams Institute on Sexual Orientation and Gender Identity Law and Public Policy indicates that approximately 45 percent of same-sex couples were married as of October 2015. (Gates, GJ, Brown, TNT. 2015. Marriage and Same-Sex Couples after *Obergefell*. Williams Institute, UCLA School of Law.) It is assumed that at least 30 percent (3,269.4) of same-sex couples in Tennessee are married.
- The legislation will result in the remaining 7,629 same-sex couples (10,898 couples – 3,269 couples already married) that are not married being prohibited from being married in Tennessee.
- For each marriage license issued, the state receives at least a \$15 privilege tax and local governments receive the following:
 - County privilege tax - \$5
 - Local option tax - \$5

- County clerk fee - \$10
- It is assumed that a minimum of five percent ($7,629 \times 0.05 = 381.45$) of the 7,629 unmarried same-sex couples would have sought a marriage license each year had the legislation not prohibited the issuance of the license.
- It is assumed that the bill will result in a recurring decrease in state revenue exceeding \$5,715 (381 couples \times \$15) as well as a recurring decrease in local revenue as follows:
 - A recurring decrease exceeding \$1,905 for county privilege taxes (381 couples \times \$5);
 - A recurring decrease exceeding \$1,905 for local option taxes (381 couples \times \$5); and
 - A recurring decrease exceeding \$3,810 for county clerk fees (381 couples \times \$10).
- The total recurring mandatory decrease in local revenue is estimated to exceed \$7,620 (\$1,905 county privilege tax + \$1,905 local option tax + \$3,810 county clerk fees).

Office of Vital Records:

- The legislation requires county clerks to electronically submit all marriage license applications to Vital Records upon receiving a completed application.
- The legislation requires Vital Records to determine whether the license being applied for would entitle the applicants to enter into a lawful or unlawful marriage under Article XI, § 18 of the Constitution of Tennessee. If the license would allow for a lawful marriage, then a license shall be issued. If the license would allow for an unlawful marriage, then the application shall be denied.
- Vital Records is under the Department of Health, and Vital Records currently receives marriage certificates from county clerks. However, the clerks have until the tenth day of the following month to send the certificates to Vital Records, and the certificates can be sent via postal mail. The legislation will not only require Vital Records to receive the applications electronically, but will also give Vital Records decision making authority and require each determination be made within three business days of receipt.
- Vital Records will require two vital records information assistants to meet the required three business day deadline.
- The salary for a vital records information assistant is \$30,696. The proposed legislation will result in a recurring increase in state expenditures estimated to be \$104,516 [(\$30,696 salary + \$11,662 benefits + \$7,900 administrative cost + \$1,400 communications + \$600 supplies) \times 2].
- The one-time increase in state expenditures associated with the two additional positions is estimated to be \$8,600 [(\$1,600 computer cost + \$2,700 office furniture) \times 2 positions].

General Assembly hiring legal counsel:

- The legislation authorizes the Speaker of the House of Representatives and the Speaker of the Senate to employ legal counsel to defend the act if the Attorney General and Reporter decline to defend the act pursuant to Tenn. Code Ann. § 8-6-109(b)(9).
- This analysis assumes that at least one lawsuit would be filed.
- The cost of defending such a lawsuit cannot be reasonably determined due to multiple, unknown factors. However, it is reasonable to assume that any lawsuit would increase

expenditures by at least \$100,000 for legal fees and expenses, which would be borne by the General Assembly.

Federal funding:

- The Division of TennCare (TennCare) reports that the legislation would result in additional administrative costs because TennCare would have to track married persons and determine whether they are in a different-sex or same-sex marriage.
- TennCare would need to make changes to its system to track these individuals. TennCare could not reasonably estimate the extent of the administrative costs.
- It is assumed that TennCare currently budgets for such system changes and that any impact can be accommodated within TennCare's existing resources.
- TennCare also reports that if someone is denied coverage that would otherwise be eligible by virtue of being in a same-sex marriage, and such action is considered noncompliant with federal law, then TennCare's federal funding, approximately \$7,493,714,600 in FY18-19, could be in jeopardy.
- The Department of Human Services (DHS) reports that the Supplemental Nutrition Assistance Program (SNAP) and Temporary Assistance for Needy Families (TANF) funds received by the department could also be in jeopardy. These funds total over \$2 billion.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink that reads "Krista Lee Carsner". The signature is written in a cursive, flowing style.

Krista Lee Carsner, Executive Director

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